



Environmental Quality Commission
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LAJUANA S. WILCHER
SECRETARY

24 July 2006

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet
Capital Plaza Tower
Frankfort, KY 40601

Secretary Wilcher:

The Environmental Quality Commission (EQC) held a quarterly meeting on 8 June 2006. One of the agenda items was a discussion of proposed changes to underground storage tank (UST) regulations. Representatives from the Division of Waste Management (DWM) provided an overview on UST proposed regulations via a PowerPoint presentation and answered questions posed by the Commissioners. Additionally, the Statement of Considerations, prepared by the DWM in response to written concerns received after the 23 May 2006 public hearing, was reviewed by the EQC at the 24 July 2006 Annual Meeting. After careful review of the regulation amendments and the Statement of Consideration the EQC submits the attached recommendation of adoption of the proposed UST regulations.

The issue of diversion of funds from the DWM's budget to the General Fund was also addressed at the 8 June meeting. Since 1997, \$235 million will have been transferred to the General Fund by the end of Fiscal Year 2006 (38% of total fund receipts). Approximately \$27 million was transferred to the General Fund in 2004 and the Fiscal Year 2006 budget passed during the 2005 Session called for \$18 million of the year end cash balance to be transferred to the General Fund at the close of Fiscal Year 2006.

The EQC is concerned about this continued diversion of funds, as it has two profound adverse effects to the public and environment.

1. Pursuant to Public Law 109-58, Title XV, Subtitle B-Underground Storage Tank Compliance, Section 1521(a) (f)(2) Allocation (B) Diversion of State Funds, *The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subtitle, with the exception of those transfers that had been completed earlier than the date of enactment of this subsection.* The continued diversion of funds earmarked for UST remediation and regulatory compliance enforcement will result in the loss of federal funding for Kentucky's Division of Waste Management.
2. The transfer of funds from the DWM's annual budget has resulted in programmatic responses that include the suspension of obligations of the DWM, application approvals



and corrective actions. Secondary environmental effects include soil and groundwater contamination from USTs not receiving corrective measures. Corrective action is necessary at 2,500 UST facilities with confirmed contamination in Kentucky. The continued suspension of the DWM's ability to provide their services to the citizens of the Commonwealth poses a significant threat to human health and the environment.

The EQC urges the Cabinet to take action and end the transfer of the DWM's budgetary funds to the General Fund.

The EQC recommends that the DWM evaluate the environmental and economic feasibility of an installation requirement for double-walled tank construction for new installations within wellhead protection areas. This requirement may provide the Commonwealth a more protective and cost-effective level of contamination/leakage prevention for newly installed USTs beyond that required by the recently enacted Federal Energy Bill. The double-walled tanks are designed to address stringent environmental concerns, wherein the primary tank is completely contained thereby reducing leaks to the environment and lessening the need for expensive remediation. The EQC suggests that the installation of UST's with double walls be considered for feasibility by the DWM in future regulatory requirements.

Thank you for your consideration of the attached recommendation of adoption of the proposed UST regulations and additional recommendations by the EQC.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindell Ormsbee", with a long horizontal flourish extending to the right.

Lindell Ormsbee, Chair, Environmental Quality Commission

Cc: Bruce Scott, Division of Waste Management
Rob Daniell, Division of Waste Management
Lloyd Cress, Department for Environmental Protection
Karen Wilson, Environmental and Public Protection Cabinet, Office of the Secretary



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RECOMMENDATION OF THE KENTUCKY ENVIRONMENTAL QUALITY COMMISSION UNDERGROUND STORAGE TANK PROPOSED REGULATIONS/AMENDMENTS/REPEALER

Pursuant to KRS 224.01-100 through 224.04-115, the Environmental Quality Commission shall have the power, duty and authority to:

- Recommend adoption or rejection by a majority of its membership present and voting of any proposal by the Cabinet to adopt, modify or revoke any rule or regulation pertaining to the prevention, abatement and control of existing or threatened air or water pollution, disposal of waste, control of noise, or the use of air, land, or water resources, or strip mining and reclamation.
- The Commission shall tender, in writing, its recommendation of adoption or rejection. If the Cabinet adopts any matter upon the Commission's recommendation of rejection, the Secretary shall file with the Commission a statement of the reason therefore.

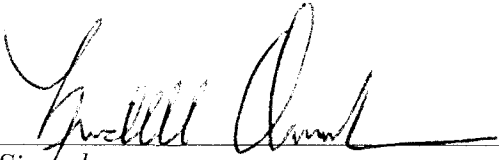
Therefore, on 24 July 2006:

the Environmental Quality Commission voted unanimously to recommend adoption of the Kentucky Division of Waste Management proposed regulations, amendments, and repealers listed below.

401 KAR 42:005	Definitions related to 401 KAR Chapter 42
401 KAR 42:011	Scope of Underground Storage Tank Program
401 KAR 42:020	UST Systems: Design, Construction, Installation and Registration
401 KAR 42:030	General operating requirements
401 KAR 42:040	UST system release detection
401 KAR 42:050	UST system release reporting, investigation and confirmation
401 KAR 42:060	UST system release response and corrective action for UST systems containing petroleum or hazardous substances
401 KAR 42:070	Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change-in-service of UST systems
401 KAR 42:072	Repeal of 401 KAR 42:071, 401 KAR 42:260, 401 KAR 42:270, 401 KAR 42:280, and 401 KAR 42:310



401 KAR 42:080	Classification of UST systems containing petroleum and listing of associated cleanup levels
401 KAR 42:090	Financial responsibility
401 KAR 42:200	Underground storage tank system owner registration fees
401 KAR 42:250	Petroleum Storage Tank Environmental Assurance Fund Reimbursement Procedures
401 KAR 42:290	Ranking system
401 KAR 42:300	Third-party claims
401 KAR 42:314	Contractor certification
401 KAR 42:316	Certification of contracting companies
401 KAR 42:330	Small Owners Tank Removal Account
401 KAR 42:335	Financial audits
401 KAR 42:340	Laboratory certification
415 KAR 1:051	Repeal of 415 KAR 1:050


Signed _____ date 7/24/06

cc: Bruce Scott, Director, Division of Waste Management
Karen Wilson, Policy Advisory, Office of Legislative and Intergovernmental Affairs
Lloyd Cress, Commissioner, Department for Environmental Protection